

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

|                                    |   |                       |
|------------------------------------|---|-----------------------|
| TERESA A. THOMPSON,                | : |                       |
| Individually and as Administratrix | : |                       |
| of the Estate of                   | : |                       |
| Robert W. Thompson,                | : | NO. 1:13-cv-02482-JEJ |
| Deceased,                          | : |                       |
| Plaintiff                          | : |                       |
|                                    | : |                       |
| v.                                 | : | ELECTRONICALLY FILED  |
|                                    | : |                       |
| D&H DISTRIBUTING                   | : |                       |
| COMPANY,                           | : |                       |
| Defendant                          | : |                       |

**DEFENDANT'S MOTION TO DISMISS COUNTS I, II, III, AND V  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)**

For the reasons set forth in its brief in support, which will be filed in accordance with the local rules for the United States District Court for the Middle District of Pennsylvania, Defendant D&H Distributing Company ("D&H"), by and through its undersigned counsel, hereby moves to dismiss with prejudice Counts I, II, III, and V of the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The causes of action set forth in Counts I, II, III, and V of the Complaint are completely preempted by the federal Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.*

McNEES WALLACE & NURICK LLC

By /s/ Dana W. Chilson

James P. DeAngelo

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Dated: October 7, 2013

*Counsel for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, a true and correct copy of the foregoing *Defendant's Motion to Dismiss Counts I, II, III, and V Pursuant to Federal Rule of Civil Procedure 12(b)(6)* was served upon the following via the Court's ECF system:

Loren A. Schrum, Esq.  
Cory M. Lamoureux, Esq.  
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Lebanon, PA 17042-7406

*Counsel for Plaintiff*

/s/Dana W. Chilson  
Dana W. Chilson

Dated: October 7, 2013